

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Apr 09, 2025

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

CHRISTINE R.,¹

No. 2:24-cv-379-EFS

Plaintiff,

v.

LELAND DUDEK, Acting
Commissioner of Social Security,²

**ORDER REVERSING THE ALJ'S
DENIAL OF BENEFITS, AND
REMANDING FOR MORE
PROCEEDINGS**

Defendant.

Plaintiff Christine R. asks the Court to reverse the Administrative Law Judge's (ALJ) denial of Title 2 and Title 16 benefits. Plaintiff claims she is unable to work due to physical and mental-health impairments. Because the ALJ's step-two finding that Plaintiff did not have a severe mental-health impairment is not

¹ For privacy reasons, Plaintiff is referred to by first name and last initial or as "Plaintiff." *See* LCivR 5.2(c).

² Leland Dudek has been named the Acting Commissioner of Social Security. Pursuant to Federal Rule of Civil Procedure 25(d) and 42 U.S.C. § 405(g), he is hereby substituted as the Defendant.

1 supported by substantial evidence, this matter is remanded for further
2 proceedings.

3 **I. Background**

4 In November 2022, Plaintiff applied for benefits under Titles 2 and 16,
5 claiming disability beginning April 30, 2020, at the age of 38.³ After the agency
6 denied benefits, ALJ Lisa Raleigh held a telephonic hearing in April 2024, at which
7 Plaintiff appeared without legal representation and testified, and a vocational
8 expert also testified.⁴

9 The ALJ issued a decision denying benefits.⁵ The ALJ found Plaintiff's
10 alleged symptoms were not entirely consistent with the medical evidence and other
11 evidence.⁶ As to the medical opinions, the ALJ found:

12 • The state agency psychological medical findings of John Wolfe, PhD,
13 and Leslie P., PhD; the examining medical opinions of Kayleen Islam-
14 Zwart, PhD; and the treating medical opinions of Zachary Zorrozua,
15 LICSW, CDP, not persuasive.

16
17
18 ³ AR 211–29.

19 ⁴ AR 44–95.

20 ⁵ AR 20–43. Per 20 C.F.R. §§ 404.1520(a)–(g), 416.920(a)–(g), a five-step evaluation
21 determines whether a claimant is disabled.

22 ⁶ AR 29.

- The state agency medical findings of Michael Jackson, MD, and Prianka Gerrish, MD, “more persuasive.”⁷

As to the sequential disability analysis, the ALJ found:

- Plaintiff met the insured status requirements through September 30, 2023.
- Step one: Plaintiff had not engaged in substantial gainful activity since April 30, 2020, the alleged onset date.
- Step two: Plaintiff had the following medically determinable severe impairments: bilateral carpal tunnel syndrome; hip bursitis; migraines; and cervical, thoracic, and lumbar degenerative disc disease. She also found the following non-severe impairments: borderline personality disorder, major depressive disorder, anxiety, and adjustment disorder.
- Step three: Plaintiff did not have an impairment or combination of impairments that met or medically equaled the severity of one of the listed impairments.

⁷ AR 32–35. The ALJ also found the evaluation by Liz Bratcher, PT, not persuasive, noting that Mr. Bratcher was not an acceptable medical source. The ALJ did not mention whether Tyler Clifton, PT, was or was not an acceptable medical source, when finding his evaluation minimally persuasive.

- 1 • RFC: Plaintiff had the RFC to perform light work except she can only
2 frequently push/pull with her right upper extremity, frequently reach
3 in all directions with the bilateral upper extremities, frequently
4 handle and finger with the bilateral upper extremities, have frequent
5 exposure to loud noise and vibration, and frequently climb, stoop, and
6 crawl.
- 7 • Step four: Plaintiff can perform her past relevant work as a
8 receptionist.
- 9 • Step five: considering Plaintiff's RFC, age, education, and work
10 history, Plaintiff can perform work that exists in significant numbers
11 in the national economy, such as marker, routing clerk, and cashier
12 II.⁸

13 Plaintiff timely requested review of the ALJ's decision by the Appeals
14 Council and now this Court.⁹

15 **II. Standard of Review**

16 The ALJ's decision is reversed "only if it is not supported by substantial
17 evidence or is based on legal error" and such error impacted the nondisability

21 ⁸ AR 23–37.

22 ⁹ AR 1–6.

1 determination.¹⁰ Substantial evidence is “more than a mere scintilla but less than
2 a preponderance; it is such relevant evidence as a reasonable mind might accept as
3 adequate to support a conclusion.”¹¹

4 **III. Analysis**

5 Plaintiff argues the ALJ erred at several steps of the disability analysis,
6 including at step two. The Commissioner argues the ALJ’s decision is supported by
7 substantial evidence. As is explained below, the ALJ consequentially erred at step
8 two.

9
10
11 ¹⁰ *Hill v. Astrue*, 698 F.3d 1153, 1158 (9th Cir. 2012). See 42 U.S.C. § 405(g);
12 *Molina v. Astrue*, 674 F.3d 1104, 1115 (9th Cir. 2012)), superseded on other
13 grounds by 20 C.F.R. § 416.920(a) (recognizing that the court may not reverse an
14 ALJ decision due to a harmless error—one that “is inconsequential to the ultimate
15 nondisability determination”).

16 ¹¹ *Hill*, 698 F.3d at 1159 (quoting *Sandgathe v. Chater*, 108 F.3d 978, 980 (9th Cir.
17 1997)). See also *Lingenfelter v. Astrue*, 504 F.3d 1028, 1035 (9th Cir. 2007) (The
18 court “must consider the entire record as a whole, weighing both the evidence that
19 supports and the evidence that detracts from the Commissioner’s conclusion,” not
20 simply the evidence cited by the ALJ or the parties.) (cleaned up); *Black v. Apfel*,
21 143 F.3d 383, 386 (8th Cir. 1998) (“An ALJ’s failure to cite specific evidence does
22 not indicate that such evidence was not considered[.]”).

1 **A. Step Two: Plaintiff establishes consequential error.**

2 Plaintiff argues that the ALJ erred at step two by failing to classify her
3 mental-health impairments as severe impairments. The Commissioner argues that
4 the ALJ cited substantial evidence showing that Plaintiff's mental impairments
5 were not severe, and any error would be harmless because the RFC accounted for
6 all impairments. As is explained below, the Court agrees with Plaintiff's position.

7 1. Standard

8 At step two, the ALJ determines whether the claimant suffers from a
9 "severe" impairment, i.e., one that significantly limits her physical or mental
10 ability to do basic work activities.¹² This involves a two-step process: 1)
11 determining whether the claimant has a medically determinable impairment, and
12 2) if so, determining whether the impairment is severe.¹³ To be severe, the medical
13 evidence must establish that the impairment would have more than a minimal
14 effect on the claimant's ability to work.¹⁴

15 Neither a claimant's statement of symptoms, nor a diagnosis, nor a medical
16 opinion sufficiently establishes the existence of an impairment.¹⁵ Rather, "a
17

18 ¹² 20 C.F.R. §§ 404.1520(c), 416.920(c).

19 ¹³ *Id.* §§ 404.1520(a)(4)(ii), 416.920(a)(4)(ii).

20 ¹⁴ *Id.* §§ 404.1520(a)(4)(ii), 416.920(a)(4)(ii); *see* Soc. Sec. Rlg. (SSR) 85-28: Titles II
21 and XVI: Medical Impairments That Are Not Severe.

22 ¹⁵ 20 C.F.R. §§ 404.1521, 416.921.

1 physical or mental impairment must be established by objective medical evidence
2 from an acceptable medical source.”¹⁶ Evidence obtained from the “application of a
3 medically acceptable clinical diagnostic technique, such as evidence of reduced joint
4 motion, muscle spasm, sensory deficits, or motor disruption” is considered objective
5 medical evidence.¹⁷ If the objective medical signs and laboratory findings
6 demonstrate the claimant has a medically determinable impairment, the ALJ must
7 then determine whether that impairment is severe.¹⁸

8 The severity determination is discussed in terms of what is *not* severe.¹⁹ A
9 medically determinable impairment is not severe if the “medical evidence
10 establishes only a slight abnormality or a combination of slight abnormalities
11 which would have no more than a minimal effect on an individual’s ability to

12
13
14 ¹⁶ *Id.* §§ 404.1521, 416.921. *See also* SSR 85-28 at *4 (“At the second step of
15 sequential evaluation ... medical evidence alone is evaluated in order to assess the
16 effects of the impairment(s) on ability to do basic work activities.”).

17 ¹⁷ 3 Soc. Sec. Law & Prac. § 36:26, Consideration of objective medical evidence (2019).
18 *See also* 20 C.F.R. §§ 404.1502(f), 416.902(k), 416.913(a)(1).

19 ¹⁸ *See* SSR 85-28 at *3. Signs means one or more anatomical, physiological, or
20 psychological abnormalities that can be observed, apart from [a claimant’s]
21 statements (symptoms).” 20 C.F.R. §§ 404.1502(g), 416.902(l).

22 ¹⁹ *Smolen v. Chater*, 80 F.3d 1273, 1290 (9th Cir. 1996).
23

work.”²⁰ Because step two is simply to screen out weak claims,²¹ “[g]reat care should be exercised in applying the not severe impairment concept.”²²

2. Mental-health treatment and examinations

The medical records include objective medical evidence supporting the existence of a mental-health impairment. In March 2021, Plaintiff sought treatment for anxiety and depression, requesting a behavioral health referral.²³ She was prescribed bupropion for depression and hydroxyzine for anxiety.²⁴ Then in May 2022, Plaintiff participated in an intake for behavioral health services.²⁵ She advised that she was still taking the prescribed medication; she was observed with cooperative attitude, normal insight and judgment, full affect, and euthymic mood; and she received a GAD-7 score of 17 (severe).

Days later she had a psychiatric diagnostic evaluation, wherein her GAD-7 score was 18 (severe) and her PHQ-9 score was 18 (moderately severe). The notes from the evaluation vary from indicating that Plaintiff was observed to be calm, cooperative, logical and linear in her thought process with intact insight and

²⁰ *Id.*; see SSR 85-28 at *3.

²¹ *Smolen*, 80 F.3d at 1290.

²² SSR 85-28 at *4.

23 AR 486-90.

24 AR 487, 480-82

35 APR 2015 21

1 judgment, to that she was ‘very emotional today and wants to prioritize sleep,’
2 with anxious mood and attitude and labile affect, and that she cried “on and off
3 during the assessment.”²⁶ The evaluator noted that Plaintiff “presents today with
4 [major depressive disorder], severe and GAD. She reports years of depression and
5 more recently impulsivity.”²⁷

6 During a September 2022 Washington State Department of Social and
7 Health Services encounter, the social service specialist noted that Plaintiff spoke
8 clearly and that she appeared to understand the questions, but that her affect was
9 flat and her “thought process appeared to be clouded and she was quite
10 overwhelmed.”²⁸

11 During a medication-refill appointment in September 2022, Plaintiff was
12 observed as cooperative with normal thought content and attention but with
13 tangential speech, anxious mood, and tearful affect.²⁹ She was referred for
14 behavioral health counseling and for a psychological examination.³⁰

15
16
17
18 ²⁶ AR 434, 444.
19
20 ²⁷ AR 434.
21
22 ²⁸ AR 510.
23 ²⁹ AR 608.
30 AR 607.

1 Days later, Dr. Islam-Zwart conducted a psychological examination by
2 telephone.³¹ She noted that Plaintiff was “quite emotional as she speaks.”³² She
3 noted that Plaintiff reported “being reactive to situations that occur,” that “it is
4 hard to control her mood,” “she will be doing fine and then someone has a tone or
5 talks down to her and she gets upset and starts crying,” that her emotional
6 responses have “been worse the last year or two because she is so sensitive given
7 the things that have happen[ed],” she takes her emotions out on others, she gets
8 easily overwhelmed, and she has panic attacks.³³ She found Plaintiff to be
9 orientated with a labile affect, as depressed and anxious, as “frequently emotional,”
10 as talkative and needing to be often redirected, to offer more information than was
11 asked of her, with speech that was a little choppy, and seeming to be easily
12 overwhelmed, but with no real indication of cognitive difficulty.³⁴ Based on the
13 examination, Dr. Islam-Zwart opined that Plaintiff:

14 • was moderately limited in her abilities to: perform routine tasks without
15 special supervision, be aware of normal hazards and take appropriate
16 precautions, communicate and perform effectively in a work setting,

17
18
19

³¹ AR 514–23.

20 ³² AR 519.

21 ³³ AR 519–20.

22 ³⁴ AR 522.

1 maintain appropriate behavior in a work setting, and set realistic goals
2 and plan independently.

3 • was markedly limited in her abilities to: adapt to changes in a routine
4 work setting, complete a normal workday and workweek without
5 interruptions from psychologically based symptoms; perform activities
6 within a schedule, maintain regular attendance, and be punctual within
7 customary tolerances without special supervision; and understand,
8 remember, and persist in tasks by following detailed instructions.

9 • “would probably struggle to work at his [sic] time, but her prognosis [for]
10 the future seems guarded to fair with access to intervention and
11 stability.”³⁵

12 David Morgan, PhD. reviewed Dr. Islam-Zwart’s report and agreed with her opined
13 limitations.³⁶

14 After the psychological examination, Plaintiff met with a social worker at
15 Frontier Behavioral Health to complete an intake interview. Plaintiff presented as
16 polite and cooperative but she “did become tearful at times throughout intake and
17 appeared to become frustrated with herself for this based upon tone of voice and
18 also apologizing multiple times for her tears.”³⁷

19
20

³⁵ AR 522.

21 ³⁶ AR 536.

22 ³⁷ AR 572.

1 Plaintiff participated in counseling with Debbie Bardwell, PhD, in November
2 2022.³⁸ Plaintiff was observed with rapid speech that was at times disjointed and
3 choppy, as emotionally labile, as becoming quickly agitated and angry, and with no
4 obvious indications of cognitive disability, and Plaintiff requested a more qualified
5 provider.³⁹ Dr. Bardwell referred Plaintiff for dialectical behavior therapy (DBT)
6 due to the borderline personality component of her needs.⁴⁰

7 Plaintiff began therapy with one of the recommended DBT practitioners—
8 Zachary Zorrozua, LICSW, CDP, two weeks later in December 2022.⁴¹
9 Mr. Zorrozua observed Plaintiff with good eye contact, with normal speech, as
10 sad/depressed, embarrassed/shameful, organized, future orientated, with intact
11 recent and remote memory, intact attention/concentration, and with poor
12 confidence/esteem and insight.⁴² The record contains treatment notes for Plaintiff's
13 weekly therapy with Mr. Zorrozua for the next two months, during which Plaintiff
14 was observed with largely the same mental-health findings, including becoming
15 visibly distraught during two sessions.⁴³

16 _____
17 ³⁸ AR 576–81.

18 ³⁹ AR 578.

19 ⁴⁰ AR 581.

20 ⁴¹ AR 581, 832–34.

21 ⁴² AR 832–34.

22 ⁴³ AR 812–31.

1 Also in March, John Wolfe, PhD, reviewed the then-available medical
2 records and found Plaintiff had the following diagnosed severe mental
3 impairments: depressive, bipolar, and related disorders; personality disorders; and
4 anxiety and obsessive-compulsive disorders.⁴⁴ Dr. Wolfe opined that Plaintiff was
5 moderately limited in the B Criteria of interacting with others and concentrating,
6 persisting, or maintaining pace, and mildly limited in understanding,
7 remembering, or applying information.⁴⁵ Dr. Wolfe noted that Plaintiff has “limited
8 stress tolerance and works at a slower pace.”⁴⁶ As a result, Dr. Wolfe opined that
9 Plaintiff should interact with others on an occasional and superficial basis.⁴⁷

10 From March through May 2023, Plaintiff had five appointments to manage
11 her psychiatric medication.⁴⁸

12 In July 2023, Leslie P., PhD, reviewed the available medical records and
13 agreed with Dr. Wolfe’s found diagnosed severe mental-health impairments,
14 Criteria B ratings, and opined limitations.⁴⁹

15
16
17 ⁴⁴ AR 100–18.

18 ⁴⁵ AR 101.

19 ⁴⁶ AR 102.

20 ⁴⁷ AR 105.

21 ⁴⁸ AR 1028–50.

22 ⁴⁹ AR 121–42.

1 In March 2024, Mr. Zorroza wrote a letter stating that he has treated
2 Plaintiff for major depressive disorder since December 2022.⁵⁰ He wrote that her
3 symptoms have only “mildly improved” since he started treatment and that:

4 Due to the past and current severity of her symptoms, there is no way
5 that [Plaintiff] is capable of maintaining employment. We have
6 addressed this topic in numerous sessions. While many of the
7 challenges she faces are physical in nature (related to physical health
8 conditions), her mental health symptoms continue to be a significant
9 impairment that would make employment in any setting impossible.⁵¹

10 3. The ALJ's step-two findings

11 Although the ALJ found that Plaintiff had severe physical impairments, the
12 ALJ found that Plaintiff's diagnosed borderline personality disorder, major
13 depressive disorder, anxiety, and adjustment disorder—singly and in
14 combination—were non-severe because they did not cause more than a minimal
15 limitation on her ability to perform basic mental-work activities.⁵² When reaching
16 this finding, the ALJ found that Plaintiff had mild limitations in the four broad
17 areas of mental functioning: understanding, remembering, or applying information;
18 interacting with others; concentrating, persisting, or maintaining pace; and
19 adapting or managing oneself.⁵³ To support these findings, the ALJ relied on

20 ⁵⁰ AR 407.

21 ⁵¹ AR 407.

22 ⁵² AR 26.

23 ⁵³ AR 26–27.

1 Plaintiff's ability to "care for her children and pets, prepare meals, perform
2 household chores, drive, use public transportation, shop in stores and by phone,
3 pay bills, count change, handle a savings account, and use a checkbook/money
4 orders."⁵⁴ In addition, the ALJ highlighted:

- 5 Plaintiff had normal memory and understanding at her September 2022
6 psychological evaluation, intact concentration and recent and remote
7 memory at her therapy sessions, and normal cognition and concentration
8 at primary care appointments.
- 9 She spelled WORLD forward and backward during her psychological
10 exam, although she indicated she was unable to complete a serial 7s task.
- 11 She had not been fired or laid off from a job due to problems getting along
12 with other people.
- 13 She reported that she spent time with others regularly and that she did
14 not have problems getting along with authority figures.
- 15 She interacted with many caregivers who did not note any mental-health
16 problems.
- 17 She purchased a vehicle for herself.
- 18 She had worked part-time as a massage therapist.

21
22

⁵⁴ AR 26.
23

1 • She had normal judgment and insight at her mental health treatment
2 appointments.⁵⁵

3 In a later portion of the ALJ's disability evaluation, the ALJ found unpersuasive
4 each of the psychological administrative findings and medical opinions.⁵⁶

5 4. Analysis

6 The observations during Plaintiff's therapy, medication-management
7 appointments, and the psychological examination are such that substantial
8 evidence does not support the ALJ's decision to find no severe mental-health
9 impairment. The ALJ cherrypicked the normal judgment/insight notations without
10 considering that treating counselor Mr. Zorrozua consistently noted that Plaintiff's
11 insight, particularly as to interpersonal relationships, was poor.⁵⁷ Likewise,
12 Dr. Bardwell observed emotional lability, rapid speech, and quick agitation.⁵⁸
13 Considering the observations of Dr. Islam-Zwart and Plaintiff's mental-health care
14 providers, the ALJ's finding that “[t]he record also indicates that the claimant has
15 had to interact with many caregivers who do not note any mental health problems”

16
17 ⁵⁵ AR 26–27.

18 ⁵⁶ AR 32–34.

19 ⁵⁷ Compare AR 27 (“The claimant had normal judgment and insight at her mental
20 health treatment appointments (Ex. 1F).”) with AR 812–34 (noting poor insight at
21 each counseling session).

22 ⁵⁸ AR 576–80.

1 is not supported by substantial evidence. Likewise, the ALJ's reliance on Plaintiff's
2 ability to perform the listed daily activities does not provide substantial evidence to
3 discount the opinions of Dr. Wolfe and Dr. P., as they were aware of these activities
4 when they found that Plaintiff had severe mental-health impairments.

5 By unfairly relying on non-mental-health treatment records and opinions,
6 the ALJ cherrypicked the evidence to reach a step-two finding contrary to each of
7 the mental-health professionals.⁵⁹ The ALJ's step-two finding is not supported by
8 substantial evidence. This error was consequential because no non-exertional
9 limitation, such as Dr. Wolfe's and Dr. P.'s opinion that Plaintiff be limited to
10 occasional/superficial interactions with others, was included in the RFC.

11
12
13
14

15 ⁵⁹ See, e.g., *Tackett v. Apfel*, 180 F.3d 1094, 1102-03 (9th Cir. 1999) (holding an ALJ
16 erred in rejecting physicians' opinions and rendering his own medical opinion);
17 *Banks v. Barnhart*, 434 F. Supp. 2d 800, 805 (C.D. Cal. 2006) ("An ALJ cannot
18 arbitrarily substitute his own judgment for competent medical opinion, and he
19 must not succumb to the temptation to play doctor and make his own independent
20 medical findings"); *Nguyen v. Chater*, 172 F.3d 31, 35 (1st Cir. 1999) (recognizing
21 that as a lay person, the ALJ is "simply not qualified to interpret raw medical data
22 in functional terms").

23

1 **B. Other Steps: The ALJ must reevaluate on remand.**

2 Because the above errors impacted the ALJ's assessment of the medical
3 evidence, the medical opinions, and Plaintiff's symptom reports, the Court does not
4 analyze Plaintiff's remaining claims.

5 **IV. Conclusion**

6 Plaintiff establishes the ALJ erred. An ALJ is to develop the record and
7 reevaluate—with meaningful articulation and evidentiary support—the sequential
8 process, while including a severe mental-health impairment.

9 Accordingly, **IT IS HEREBY ORDERED:**

10 1. The ALJ's nondisability decision is **REVERSED, and this matter is**
11 **REMANDED to the Commissioner of Social Security for**
12 **further proceedings pursuant to sentence four of 42 U.S.C. §**
13 **405(g).**

14 2. The Clerk's Office shall **TERM** the parties' briefs, **ECF Nos. 8 and 9,**
15 enter **JUDGMENT** in favor of **Plaintiff**, and **CLOSE** the case.

16 IT IS SO ORDERED. The Clerk's Office is directed to file this order and
17 provide copies to all counsel.

18 DATED this 9th day of March 2025.

19 

20

EDWARD F. SHEA
21 Senior United States District Judge
22
23